



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,900	12/14/2001	GopalaKrishna Reddy Kakivaya	MSFT-0735/183222.1	9589
41505 7590 03/10/2009 WOODCOCK WASHBURN LLP (MICROSOFT CORPORATION) CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891				
EXAMINER				
REFAI, RAMSEY				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
03/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/016,900

Applicant(s)

KAKIVAYA ET AL.

Examiner

Ramsey Refai

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-22 and 24-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-22,24-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Responsive to Amendment filed December 1, 2008. Claims 1, 4-7, 14-17, 19, and 24 have been amended. Claims 32-35 have been canceled. Claims 1, 4-22, and 24-31 are pending.

Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive.

In the remarks, the Applicant argues that claims 24-31 are directed to statutory subject matter since "a device per se is not software". In response, the Examiner respectfully disagrees. The term "device" in its plain meaning, is a generic term that is not limited to a tangible device unless defined by the specification as such. The specification on pages 33-34 teaches the contrary, that the various apparatuses and systems can be implemented as software or program code per se and further can be implemented in the form of program code transmitted on a transmission medium.

Allowable Subject Matter

2. The indicated allowability of claims 1 and 4-22 is withdrawn. New grounds of rejections are cited below.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 24-31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a *distributed system*, which according to pages 33-34 of the Applicant's specification can be merely program code or software. Software and program per se claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. The claims are therefore directed to non-statutory subject matter.

5. Claims 1 and 4-22 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Art Unit: 3627

http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippgcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1 and 4-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims include the limitation "*revoking the first event subscription for the first event source*" which is indefinite because it is unclear why the first event subscription is being revoked.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1, 4-22, and 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracho et al (US 5,974,417) in view of "Official Notice".

10. As per claim 1, Bracho et al teach a method for receiving event notification in a network, comprising:

subscribing to a first event source to create a first event subscription (**see at least column 4, lines 50-52, abstract**);

receiving at least two event messages each comprising a subscription based-sequence number and a time stamp from the first event source when events occur at the first event source (**see at least fig 9, column 15, lines 36-39**);

determining the order of events within the first event source on the basis of the subscription based-sequence number within the at least two event messages (**see at least fig 9, column 15, lines 36-39**); and

subscribing to a second event source to create a second event subscription (**see at least column 18, lines 12-22, column 11, lines 1-3; subscribers subscribe to multiple events from multiple publishers**);

receiving another at least two event messages each comprising a subscription based-sequence number and a time stamp from the second event source when second events occur at the second event source (**see at least column 18, lines 12-22, column 11, lines 1-3, least fig 9, column 15, lines 36-39**);

determining the order of events within the second event source on the basis of the subscription based-sequence number within the another at least two event messages from the second event source (**see at least fig 9, column 15, lines 36-39**); and

revoking the first event subscription for the first event source (**see at least column 7, line 15, column 8, lines 55-59**).

Bracho et al teach the use of time stamps (**see at least column 14, line 15, column 15, line 23**) and that events are delivered to subscribers based on a first-in, first-out policy; in the order they are received from the publishers (**see at least column 10, lines 8-11**). Bracho et al also teach the ordering of events (**see at least column 10, lines 1-19**). Bracho et al fail to explicitly teach *ordering the events from the second event source with respect to the first event source on the basis of the time stamp* within each of the at least two event messages from the first event source and the another at least two event messages from the second event source.

However, "Official Notice" is taken that both the concept and advantage of this feature is well known in the art as evidenced by Hao et al (US 5,844,553) and Carroll et al (US 6,327,630). Hao et al teach an ordering function that sequences events from multiple sources into a proper execution order (**see at least column 6, lines 59-67**). Carroll et al teach ordering events from a plurality of nodes based on the timestamps of the events, the most senior timestamp being delivered first (**see at least abstract, column 2, lines 25-41**). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify Bracho et al to include this limitation because doing so would allow for all events from all subscribers to be ordered in sequence based on the time stamp of each event.

11. As per claims 4 and 16, Bracho et al fail to explicitly teach wherein the at least two event messages are *described with a Type Description Language*. However, "Official Notice" is taken

that both the concept and advantage of Type Description Language is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include this feature in Bracho et al because doing so would allow for Bracho et al's system to support highly lexicalized grammar theories.

12. As per claim 5, Bracho et al fail to teach wherein the received event messages are delivered as SOAP *messages*. However, "Official Notice" is taken that both the concept and advantage of SOAP messages is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to combine the use of SOAP messages in Bracho et al because doing so would create a broader and simpler network by allowing programs of different operating systems and protocols to transfer event messages with one another.

13. As per claim 6, Bracho et al teach wherein the received at least two event messages can convey both absolute and relative values (**see at least column 11, lines 40-60**).

14. As per claim 7, Bracho et al teach wherein the first event source defines events raised by the first event source as a name-type pair (**see at least column 4, lines 50-63, column 6, lines 55-67**).

15. As per claim 8, Bracho et al teach wherein the first event source and an event sink are identified using standard types IEventSource and IeventSink, respectively (**see at least column 12, lines 4-42**).

16. As per claim 9, Bracho et al teach wherein the first event source supports filtering of events raised by the first event source **(see at least column 8, lines 17-30)**.
17. As per claim 10, Bracho et al teach wherein a subscriber can establish an event filter as part of an initial subscription **(see at least column 8, lines 17-30)**.
18. As per claim 11, Bracho et al teach wherein a subscriber can update an event filter established as part of an initial subscription **(see at column 8, lines 17-30, column 11, line 1-5)**.
19. As per claim 12, Bracho et al teach wherein the Type Description Language comprises a markup language **(see at least column 4, lines 45-47)**.
20. As per claim 13, Bracho et al teach wherein the first event source messages are one-way messages **(see at least column 14, line 63-column 15, line 17)**.
21. As per claim 14, Bracho et al teach wherein the first event subscription is made to the first event source by way of an intermediary **(see at least column 14, lines 63-column 15, line 17)**.
22. As per claim 15, Bracho et al teach wherein the at least two event messages is received through an intermediary **(see at least column 8, lines 30-50)**.

23. As per claims 17 and 27, Bracho et al fail to teach the use of *extensible markup language*. However, "Official Notice" is taken that both the concept and advantage of extensible markup language is well known in the art. It would have been obvious to one of the ordinary skill in the art at the time of the applicant's invention to include extensible Markup Language because lets Web developers and designers create tags that offer greater flexibility in organizing and presenting information than is possible with the older HTML document coding system.

24. As per claim 18, Bracho et al teach wherein the first event source is an object on a digital device (**see at least column 4, lines 1-39**).

25. As per claim 19, Bracho et al teach setting a lease term after an expiration of which the first event source discontinues transmission of at least two event messages (**see at least column 7, line 15-column 8, line 23**).

26. As per claim 20, Bracho et al teach sending a renewal message to renew the lease term (**see at least column 7, lines 1-15**).

27. As per claim 21, Bracho et al teach wherein the network is an intranet (**see at least column 4, lines 40-50, fig 1**).

28. As per claim 22, Bracho et al teach wherein the network is the Internet (**see at least column 4, lines 40-50, fig 1**).

29. As per claims 24-26, and 28-31, these claims are similar to claims 1, 2, 4, 13, 14, and 19-21 above, therefore are rejected under the same rationale

Conclusion

Examiner's Note: The Examiner has cited specific citations in the reference(s) as applied to the claim(s) above for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing their response, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3627

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
March 5, 2009
/Ramsey Refai/
Examiner, Art Unit 3627